

STATE OF MICHIGAN
COURT OF APPEALS

FREMONT MUTUAL INSURANCE
COMPANY,

Plaintiff-Appellee,

v

CRAIG M. STINNETT,

Defendant,

and

JOSEPH BAESSLER, PERSONAL
REPRESENTATIVE of the ESTATE of JOSEPH
CALDWELL,

Defendant-Appellant.

UNPUBLISHED
March 13, 2001

No. 216603
Genesee Circuit Court
LC No. 94-030191-CK

Before: Saad, P.J., and White and Hoekstra, JJ.

PER CURIAM.

This case arises from the death of a five-year-old child after a dog in defendant Stinnett's care attacked him. Plaintiff filed this lawsuit seeking a declaratory judgment that its homeowner's insurance policy issued to Stinnett's mother did not extend coverage to Stinnett because Stinnett was not a resident of his mother's household. Defendant Baessler moved for summary disposition, claiming that there is no genuine issue of material fact about Stinnett's residency because documents and sworn statements by Stinnett and others evidenced that Stinnett resided with his mother, and thus Baessler requested a determination that plaintiff is required to defend and indemnify Stinnett. The trial court denied Baessler's motion and the case proceeded to trial before the court. On appeal as of right, Baessler makes no challenge with respect to the trial; rather, Baessler challenges the trial court's order denying his motion for summary disposition on the bases that the trial court improperly considered evidence contradicting Stinnett's prior sworn testimony and that without the improperly considered evidence no genuine issue of material fact existed, and thus the trial court should have granted summary disposition. We need not resolve the former issue because, even without consideration of the contradictory

evidence, the record contained sufficient evidence of a factual conflict to avoid summary disposition. Therefore, we affirm.

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Russell v Dep't of Corrections*, 234 Mich App 135, 136; 592 NW2d 125 (1999). In evaluating a motion for summary disposition pursuant to MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions and other evidence that the parties submit, MCR 2.116(G)(5), in the light most favorable to the opposing party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The moving party is entitled to judgment as a matter of law if the proffered evidence fails to establish a genuine issue of material fact. *Id.* In deciding a motion for summary disposition, the trial court may not make findings of fact or weigh credibility. *Nesbitt v American Community Mutual Ins Co*, 236 Mich App 215, 225; 600 NW2d 427 (1999).

Here, the record Baessler relied on in moving for summary disposition reveals conflicting information about Stinnett's residence, and Stinnett's examination under oath alone provides sufficient conflicting evidence to avoid summary disposition. On the one hand, Stinnett testified that he originally rented the McCollum Street house where the dog attack later occurred with the option to buy that house on a land contract and he set up his car-related business there. Eventually, his mother bought the house as an investment when Stinnett did not have the money to buy it. According to Stinnett, he worked and ate at the McCollum Street house six or seven days per week, stayed there about four or five nights per week, and built a fence in back of the house and kept his dogs there. The telephone was in his name and most of the furniture, for which he maintained renters insurance, belonged to him, as did the television and stereo system. On the other hand, the address on Stinnett's driver's license and tax documents was his mother's address, and his fiancée, the mother of the deceased child, lived in the McCollum Street house, had the electricity and gas bills in her name and paid them herself, and paid rent to Stinnett's mother. Consistent with residing at either residence, Stinnett's examination under oath revealed that he kept clothes at the McCollum Street house and at his mother's house, spent time at each house, and received mail at each house. Where Stinnett considered his residency to be at the time of the dog attack is not dispositive of this issue. See *Salinger v Hertz Corp*, 211 Mich App 163, 165; 535 NW2d 204 (1995) (identifying relevant factors to guide the resolution of a residency dispute). Because a genuine issue of material fact existed regarding Stinnett's residence at the time of the dog attack, the trial court properly denied Baessler's motion for summary disposition.

Affirmed.

/s/ Henry William Saad

/s/ Helene N. White

/s/ Joel P. Hoekstra